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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 145

DALTON TELEPHONE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 191-194) is reported at 187 F. 2d 811. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 68-83, 85-120), are reported at 82 NLRB 1001.

JURISDICTION

The judgment of the court below was entered on March 20, 1951 (R. 194-195).[1] Motion for recon-

[1] The reference "R" is to the printed Transcript of Record filed with this Court. The reference "B.A." is to the separately paginated Appendix to the Board's brief in the court below.

sideration was denied on May 7, 1951 (R. 217). The petition for a writ of certiorari was filed on June 25, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) and (f) of the National Labor Relations Act, as amended.

STATUTES INVOLVED

The statutory provisions principally involved are Sections 8 (a) (5), 8 (d), 9 (a), and 10 (e) of the National Labor Relations Act, as amended (61 Stat, 136, 29 U. S. C., Supp. IV, 141, *et seq.*); Section 301 (a) of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), and Code of Georgia Annotated (1935), Sec. 22-401, and 22-409 through 22-414. The pertinent provisions appear in the Appendix, *infra*, pp. 16-23.

QUESTIONS PRESENTED [2]

1. Whether an employer violates Section 8 (a) (5) of the Act when, having agreed with the union upon the substantive terms of a contract, the em-

[2] We believe that question number 1 herein embraces the matters covered by petitioner's questions numbered 12, 13, and 14, and that question number 2 herein includes the matters covered by petitioner's questions numbered 1, and 7 through 10. The challenge (petitioner's questions numbered 2 through 6) to the constitutionality of the Act as administered by the Board poses no issue which warrants consideration. Cf. *West Virginia ex rel. Dyer et al.* v. *Simms*, 341 U. S. 22, 30. Petitioner's question number 11 rests upon the obviously unfounded assumption that the Board and the Examiner differed as to an issue of fact. As the court below pointed out, the "facts pertaining to [petitioner's] failure to execute the contract are undisputed" (R. 192). See also note 5, *infra*, p. 6.

ployer refuses to execute the contract unless the union registers under a state statute authorizing unincorporated associations who register to sue and be sued in the state courts.

2. Whether the court below abused its discretion under Section 10 (e) of the Act in denying petitioner's motion to remand the proceeding to the Board to adduce additional evidence concerning the existence of the union which was the subject of the Board's bargaining order, and the union's compliance with Section 9 (f), (g), and (h) of the Act.

STATEMENT

A. *Petitioner's refusal to bargain.*—On November 15, 1946, having been satisfied that Southern Federation of Telephone Workers, herein called the Union, represented a substantial majority of petitioner's non-supervisory employees in an appropriate unit, petitioner formally recognized the Union as the employees' exclusive bargaining representative (R. 92, 111-112; 30, B. A. 3-4). By early 1947 petitioner and the Union had reached agreement on all provisions of a proposed contract (R. 69-70, 93; B. A. 11-12, 48-49), and had reduced the agreement to writing (R. 93; 38-39, 41-51). The contract was never executed, however, because petitioner insisted, as a condition precedent to its execution, that the Union register under the provisions of the Georgia Code which permit an unincorporated association, upon filing a registration certificate in any superior court of Georgia, to sue

and be sued in its own name (R. 70, 92-93, 112; B. A. 4-8, 11-12, 48-50).[3] According to petitioner's testimony, it insisted upon the Union's registration to insure that the Union "should be just as responsible on the contract as the telephone company should" and hence not free to "strike if they wanted to" (R. 94; B. A. 4-5, 50). The Union met respondent's demand to the extent of offering to incorporate a no-strike provision in the contract, but declined to register under the Code (B. A. 39-40, 42-43, 47-48, 56). Concededly, the registration issue was the "one thing" which stood in the way of petitioner's execution of the proposed contract (B. A. 11, 6, 48-49, 50).

By letter dated March 11, 1947, petitioner withdrew all offers because the Union had refused to register under the Code (R. 94, 112; B. A. 7, 50). The following day the Union served upon petitioner, and filed pursuant to the War Labor Disputes Act, a notice of intention to strike (R. 94, 100, 112; B. A. 44-45, 55).

On April 16, the non-supervisory employees went out on strike because of petitioner's refusal to execute the proposed contract (R. 94, 100, 112; 23, 25, B. A. 9, 15-16, 17, 40, 41). At the end of April or the beginning of May, Sims, State Director of the Union, met with Kirk, vice-president and general manager of petitioner, and offered to

[3] Code of Georgia Anno. (1935), Sec. 22-401 and 22-409 through 22-414.

end the strike if petitioner would reinstate the strikers, but Kirk refused unless the Union complied with petitioner's condition that it register (R. 100; B. A. 46-47). On June 24, while the strike was still in progress, Tweedy, vice-president of the Union, telegraphed Kirk, requesting a further conference (R. 95; B. A. 8, 51-52), but Kirk replied that petitioner stood by its letter of March 11 (R. 95; B. A. 8, 51). Accordingly, no further meetings were held (R. 95; B. A. 8-9, 38). Sometime in July, after Section 301 of the Labor Management Relations Act [4] had become effective, Tweedy suggested to Kirk that that provision should dispose of respondent's objection to executing the agreement. Kirk, however, remained adamant (R. 95-96; B. A. 38).

All of the striking employees applied for reinstatement to their jobs between July 3, and 25, 1947 (R. 72, 101; 24, 35-36, B. A. 9-11). No employees were reinstated at the time their request was made (*ibid.*). Thereafter, one employee was reinstated (R. 101; B. A. 32-34) and another refused an offer of reinstatement (R. 75-76; B. A. 29).

The Board found (R. 69-71, 91-96) that by insisting, as a condition precedent to the execution of the proposed contract, that the Union register under the Georgia Code, petitioner had imposed "an

[4] Section 301 (a) permits suits for breach of collective agreements in an industry affecting commerce to be brought "in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

unlawful impediment to collective bargaining"[5] and thereby violated Section 8 (5) of the original and Section 8 (a) (5) of the amended Act (R. 69-71, 77).[6] The Board also found (R. 71-73) that the strike was caused and prolonged by petitioner's unlawful refusal to bargain with the Union and, accordingly, that petitioner's refusal to reinstate the striking employees upon request was a violation of Section 8 (3) of the original and Section 8 (a) (3) of the amended Act.[7]

The Board's conventional order (R. 78-83) required petitioner to cease and desist from the unfair labor practices found, and, affirmatively, to bargain with the Union upon request, to offer reinstatement and back pay to the employees discriminated against, and to post the usual notices of compliance.

The court below, Judge Russell dissenting with-

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[5] In so holding, the Board, while adopting the Examiner's findings of fact on this question, reversed his conclusion that as a matter of law petitioner's insistence upon the Union's registration did not constitute a refusal to bargain (R. 70-71, 114-115).

[6] Since the unfair labor practices herein occurred initially before the effective date of the amended Act, the Board's decision refers to petitioner's violation of both Section 8 (1), (3), and (5) of the original Act, and Section 8 (a) (1), (3), and (5) of the amended Act. Insofar as is here pertinent the respective sections are identical (R. 69, n. 1).

[7] Petitioner does not seek review of this finding, except insofar as it is dependent upon the validity of the finding of an unlawful refusal to bargain. Nor does petitioner seek review of the Board's additional finding (R. 73-74), that it engaged in other acts of interference, restraint, and coercion, in violation of Section 8 (a) (1) of the Act.

out opinion, enforced the Board's order in full (R. 191-194).

B. *Petitioner's motion to remand.*—Early in September 1950, six months after the Board had filed its petition for enforcement of its order in the court below (R. 1), the Union filed with the Board a motion requesting the Board to amend the decision and order so as to reflect a change in the Union's name and affiliation (R. 123-157).[8] On September 26, 1950, petitioner filed a response to the motion, in which it requested the Board to seek to withdraw its petition for enforcement in the court below and reopen the record to take additional evidence concerning the identity and existence of the Union and evidence which would enable the Board to make a "redetermination" of the Union's compliance status under Section 9 (f), (g), and (h) of the Act (R. 159-163). The Board denied the Union's motion on the ground that the

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[8] The Union's motion, together with attached exhibits revealed the following facts: At the time the Union filed its charge herein in December, 1946, it was known as Southern Federation of Telephone Workers, affiliated with the National Federation of Telephone Workers, an independent labor organization (R. 123-124, 131). Thereafter the National Federation of Telephone Workers reorganized under the name of Communication Workers of America and, in June 1947, chartered Southern Division 49 C. W. A., as the successor to Southern Federation of Telephone Workers (R. 125, 138-144). The Union, however, in certain pending matters, continued to use its former name in addition to the new name (R. 126-127, 142). The Union, in August 1947, and March 1948, filed its amended charges herein under its old name (R. 12-20). And the Board's decision and order refer to the Union by its old name (R. 68-82).

court below had jurisdiction of the proceeding, and rejected petitioner's request (R. 163-164).

Thereafter, on November 15, 1950 (R. 166), petitioner filed in the court below a motion to remand the proceeding to the Board for the purpose of adducing additional evidence concerning the same matters which had been the subject of its request in its response to the Union's motion to amend the Board's decision and order (R. 166-181). The evidence which petitioner claimed would show that the Union had ceased to exist consisted of the documents appended to the motion which the Union had filed with the Board (R. 166-167, 168-169, 123-157, 179-181). The evidence which petitioner claimed would show that the Union had not been in compliance with Section 9 (f), (g), and (h) of the Act at critical times during the proceedings consisted of statements based upon official records of the Board which had been made to petitioner by Board officials (R. 167-170, 171-178). In its brief in opposition to petitioner's motion[9] the Board pointed out that the motion failed to make an adequate showing "that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board" (Section 10 (e) of the Act), and further, that the evidence on which petitioner relied showed that the charging Union had in fact not ceased to exist but had merely changed its name and affiliation (*supra*, p. 7,

[9] Copies of the brief in opposition are being certified to the Court.

n. 8). The Board also advised the court below that the statements relied upon by petitioner and the Board's official records showed that the Union had been in compliance with the requirements of Section 9 (f), (g), and (h) at all critical times during the proceedings.[10] The court below denied petitioner's motion, finding "no basis" therefor (R. 194).

ARGUMENT

1. The holding of the court below that an employer may not condition performance of his statutory obligation to bargain collectively upon compliance by the employees' representative with registration provisions of state law follows controlling decisions of this Court and warrants no further review. As the court below observed (R. 193-194):

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[10] The effective date of Section 9 (f), (g), and (h) was August 22, 1947. The Board's records show that the Union, under both its old name and its new name, came into compliance with said Section on November 28, 1947 (R. 171), was in compliance under both names at the time the third amended charge was filed, on March 25, 1948 (R. 17-19, 171-172), when the complaint issued on March 26, 1948 (R. 20-26, 171-172), during the hearing from May 17 to 20, 1948 (R. 87, 171-172), when the intermediate report issued on September 23, 1948 (R. 85-120, 171-172), and was in compliance under its new name when the Board's decision and order issued on April 12, 1949 (R. 68-81, 172), and when the Board's petition for enforcement was filed in the court below on March 18, 1950 (R. 1, 172). The Communication Workers of America became affiliated with the CIO in May 1949, after issuance of the Board's decision and order. At the time the Board filed its petition for enforcement of its order in the court below the CIO was in compliance with Section 9 (f), (g), and (h).

> The Supreme Court has held that the bargaining rights created by the National Labor Relations Act may not be conditioned upon compliance with state registration laws. *Hill* v. *Florida,* 325 U. S. 538. In the matter of *Eppinger & Russell Company,* 56 N.L.R.B. 1259, an employer defended its refusal to bargain on the ground that the workers' representative had not secured a Florida license as a business agent as required by statute, but the Board held that the duty of the employer to bargain within the meaning of the Act was not subject to the mandatory provisions of the Florida statute requiring the licensing of union agents. When the Supreme Court decided *Hill* v. *Florida, supra,* it held invalid the Florida statute involved in the *Eppinger* case, and in so doing cited the *Eppinger* case with approval, saying: "The Board properly rejected the employer's contention, holding that Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.' "

See also *Automobile Workers* v. *O'Brien,* 339 U. S. 454; *Electric Railway & Motor Coach Employees, etc.* v. *Wisconsin Employment Relations Board,* 340 U. S. 383.

Petitioner's repudiation of its statutory obligation to execute a contract with the Union where the substantive terms had been agreed upon (*H. J. Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514, 523, 526), is no less a violation of the Act

than an outright refusal to bargain at all, such as was involved in the *Eppinger* case, 56 N. L. R. B. 1259.[11] The cases relied upon by petitioner (Pet. p. 36) hold only that the mere existence of an impasse in bargaining does not establish an unlawful refusal to bargain; none of these cases even suggests that an employer may lawfully create an impasse by insisting upon a condition outside the area of collective bargaining. The imposition of such an obstacle to the fruition of collective bargaining has uniformly been held unlawful by the courts of appeals.[12]

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[11] The reasoning of the court below in *American National Insurance Company* v. *National Labor Relations Board*, 187 F. 2d 307 (C. A. 5), pending on petition for writ of certiorari, No. 126, this Term, holding that an employer may lawfully refuse to execute a contract unless the Union agrees to incorporate therein a clause waiving its right to bargain about certain terms or conditions of employment, is clearly inapplicable to the instant case, since, as the court below itself observed, the employer here conditioned execution of the contract upon "a matter outside the area of compulsory bargaining" (R. 193), and "outside the terms of the contract itself" (R. 194).

[12] See *National Labor Relations Board* v. *Tower Hosiery Mills, Inc.*, 180 F. 2d 701, 704-705 (C. A. 4), certiorari denied, 340 U. S. 811 (employer's insistence on an indemnity provision); *National Labor Relations Board* v. *H. G. Hill Stores*, 140 F. 2d 924, 925-926 (C. A. 5) (employer's insistence that union withdraw pending charges and refusal to put contract into writing); *National Labor Relations Board* v. *George P. Pilling & Son Co.*, 119 F. 2d 32, 38 (C. A. 3) (employer's insistence that union organize competitors in the industry); *National Labor Relations Board* v. *Aldora Mills*, 180 F. 2d 580 (C. A. 5), enforcing 79 NLRB 1, 2 (employer's refusal to sign a contract until the union chartered a local organization); *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C. A. 6) (Same); *American Laundry Machinery Co.* v. *National Labor Relations Board*, 174 F. 2d 124 (C. A. 6), enforcing 76 NLRB 981, 982-983 (employer's refusal to deal with union spokesman and in-

2. The claim that the court below abused its discretion under Section 10 (e) of the Act in denying petitioner's motion to remand the proceedings to the Board to adduce additional evidence (Pet. 10-11, 15, 20-21, 29-34) presents no question of general importance warranting review. Not only did petitioner fail to satisfy the court, as Section 10 (e) requires, "that there were reasonable grounds for the failure to adduce [the evidence upon which it relied] in the hearing before the Board";[13] it also failed to establish that the evidence was material. Thus, the evidence which petitioner alleged would show that Southern Division No. 49, C.W.A., was not the successor to Southern Federation of Telephone Workers proved precisely the contrary. Exhibit E annexed to the motion (R. 179-181) is a copy of the resolution and ballot submitted to the Union's membership for the purpose of obtaining

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sistence on withdrawal of pending charges and calling off of strike); *National Labor Relations Board* v. *Todd Co., Inc.*, 173 F. 2d 705, 707 (C. A. 2) (employer's insistence on union's consent not to put agreement in writing); *McQuay-Norris Mfg. Co.* v. *National Labor Relations Board*, 116 F. 2d 748, 750-751 (C. A. 7), certiorari denied, 313 U. S. 565 (employer's refusal to sign contract except with limited recognition clause); *Stewart Die Casting Corp.* v. *National Labor Relations Board*, 114 F. 2d 849, 853 (C. A. 7), certiorari denied, 312 U. S. 680 (employer's insistence on denying recognition of union as exclusive representative); *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. 2d 291, 292 (C. A. 4) (employer's insistence that union withdraw pending charges); *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. 2d 713, 719 (C. A. 3) (employer's refusal to permit union's name to appear in the agreement).

[13] Cf. *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 104-105.

their approval of the Union's change of name and affiliation. The membership overwhelmingly approved the change (R. 125, 137). The resolution provided that "it is the desire of the members of the Southern Federation of Telephone Workers to obtain a Charter from the Communications Workers of America, giving to it the same geographical jurisdiction it now enjoys, such Charter to be issued to it under the name of the Southern Division of the Communications Workers of America" (R. 180), and that "the members of the Southern Federation of Telephone Workers shall automatically become members of the Communications Workers of America through their membership in the Southern Federation of Telephone Workers, which shall thereafter be known as the Southern Division of the Communications Workers of America" (R. 181). Language could not more plainly show, we submit, that it was the Southern Federation of Telephone Workers, *i.e.,* the Union herein, which obtained the charter designating it an affiliate of the Communications Workers of America under the name of Southern Division.

Thus, on the facts revealed by petitioner's own motion papers "there was no such disruption or change of identity as to affect in any manner the validity of the parts of the order requiring petitioner to bargain collectively with the union." *Continental Oil Co.* v. *National Labor Relations Board,* 113 F. 2d 473, 478 (C. A. 10), certiorari

denied on this point, 311 U. S. 637; cf. *National Labor Relations Board* v. *E. A. Laboratories, Inc.*, 188 F. 2d 885, 888 (C. A. 2). Here, as in *National Labor Relations Board* v. *Harris-Woodson Co.*, 179 F. 2d 720, 723 (C. A. 4), petitioner's "[m]etaphysical arguments as to the nature of the entity with which [it was] dealing" do not obscure the fact that the "identity of that representative, composed entirely of the company's employees, was not changed either by its change of name or its change of affiliation."

Similarly, since the evidence upon which petitioner relied to show that the charging union was not in compliance with Section 9 (f), (g), and (h) at critical times in the proceeding did not sustain petitioner's contention, *supra*, p. 9, the court below properly found "no basis" for granting petitioner's motion to adduce such evidence.

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1951.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

* * * * *

SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit

appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

SEC. 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power

to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The

jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

* * * * *

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

TITLE III

Suits By And Against Labor Organizations

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

The relevant provisions of the Code of Georgia Annotated (1935), are as follows:

CODE OF GEORGIA ANNOTATED (1935)

SEC. 22-401. *Petition to incorporate school or church; term of charter; amendment of*

charter; cost; evidence.—The superior court, upon the petition of one or more discreet and proper persons, showing that a school, academy, college, university or church has been, or is about to be, established in the county where such court is sitting, and asking for corporate authority to enforce good order, receive donations, make purchases, and effect all alienations of realty and personalty, not for the purpose of trade and profit, but for promoting the general design of such institution, and to look after the general interest of such establishment, may grant such person or persons and their legal successors such corporate powers as may be suitable and not inconsistent with law, nor violative of private rights, the charter so granted to remain of force 20 years, or for such longer or greater term or period as may be specially prayed for in said petition and granted by said court, unless sooner revoked by law; and upon petition by the corporators, or their legal successors in charge of any such institution, however and whenever incorporated, the superior court of the county where the same is located shall have power to amend the charter thereof in any way prayed for: Provided, the same is not contrary to law nor violative of private rights. The cost of recording such proceedings on the minutes shall be paid by the petitioners, and a certified copy of the same, under the seal of the court, shall be sufficient evidence in any case of the corporate powers and privileges so granted.

SEC. 22-409. *Conveyances to churches or religious societies confirmed.*—All deeds of con-

veyance heretofore made, and which may hereafter be made, to any person or persons, for any lots of land within this State, to any church or religious society, or to trustees for the use of such church or religious society, for the purpose of erecting churches or meeting houses, are, and shall be deemed and taken to be, good and valid, and available in law for the intents, uses, and purposes contained in said deeds of conveyance; and all lots of land so conveyed shall be fully and absolutely vested in such church or religious society, or in their respective trustees, for the uses and purposes in said deed expressed; to be holden to them, or their trustees, for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively.

SEC. 22-410. *Trustees in conveyances, to what authortiy subject.*—All trustees to whom conveyances are or shall be made, for the purposes expressed in the preceding section, shall be subject to the authority of the church or religious society for which they hold the same in trust, and may be expelled from said trust by such church or society, according to the form of government or rules of discipline by which they may be governed.

SEC. 22-411. *Vacancies in trusts; record of certificate of appointment.*—Every church or religious society is authorized to fill all vacancies which may happen in the said trusts by death, removal, expulsion, or otherwise; and when any vacancy shall be filled, the same shall be certified under the hand of the person pre-

siding in the society, and according to the form of government or discipline practiced by said church or society, which certificate shall express the name of the person appointed to fill the vacancy and the name of the person in whose place he shall be appointed; and the said certificate being recorded in the office of the clerk of the superior court of the county in which the land lies, the person so appointed to fill such vacancy shall be as fully vested with such trust as if a party to and named in the original deed: Provided, the failure so to have recorded the certificate of appointment aforesaid shall not operate to disqualify, or render incompetent to act in any proceeding, any trustee duly appointed by the form of government or discipline practiced by the church or society having the power to appoint trustees.

SEC. 22-412. *Sections 22-409 to 22-411 construed to apply to all societies.*—Sections 22-409 to 22-411 shall be so construed as to apply to all societies, whether social, charitable, secret, Masonic, or by whatever name they may be called; and all criminal laws for the protection of religious societies shall be so construed as to apply to all societies, by whatever name they may be called.

SEC. 22-413. *Incorporation of library and other literary, charitable, or social organizations.*—Library and other literary, charitable, or social organizations, which have no capital stock, and are not organized for individual pecuniary gain, may be incorporated under the provisions of section 22-401, all of the pro-

visions of which are hereby made applicable to the organizations aforesaid.

SEC. 22-414. *Corporate rights, etc.*—The societies referred to in the preceding section shall be bodies politic and corporate for the purposes of receiving in their distinct and proper names, by their trustees or officers, all property, both personal and real, by purchase, gift, or bequest. They may plead and be impleaded, contract and be contracted with. When any such society shall have entered the names of its trustees or officers and shall have recorded its name, style, and objects as required by law it may defend and be defended, and shall then be entitled to all the benefits of sections 22-409 to 22-411.

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